

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

ANTHONY ANDRE PAUL, et al.,

Plaintiffs,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

**DECLARATION OF
SUSAN P. SCHARFSTEIN
IN SUPPORT OF
DEFENDANTS' MOTION
FOR SUMMARY
JUDGMENT**

16 CV 01952 (VSB) (SN)

----- x

I, SUSAN P. SCHARFSTEIN, declare, pursuant to 28 U.S.C. §1746, under penalty of perjury, that the following is true and correct:

1. I am an attorney in the office of James E. Johnson, Corporation Counsel of the City of New York, counsel for defendants City of New York, Vincent Giordano, Eugene McCarthy, Michael Licitra, Anthony DiFrancesca, Richard Hefner, Aramis Ramos, Darren McNamara, Andrew McCormack, Finbarr McCarthy, and Kevin O'Doherty (police defendants) in the above-referenced action. I am familiar with the facts stated below and submit this declaration to place the relevant information and documents on the record in support of defendants' motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

2. Annexed hereto as Exhibit A is the transcript of the deposition of plaintiff Albert Paul, dated December 19, 2018 (redacted pursuant to Item # 5.B.i. of the Court's Individual Rules & Practices in Civil Cases).

3. Annexed hereto as Exhibit B is the transcript of the hearing held of deceased plaintiff Anthony Andre Paul pursuant to New York General Municipal Law 50-h,

dated October 26, 2015 (redacted pursuant to Item # 5.B.i. of the Court's Individual Rules & Practices in Civil Cases).

4. Annexed hereto as Exhibit C is the transcript of the deposition of plaintiff's niece Michelle Charles, dated March 4, 2019.

5. Annexed hereto as Exhibit D is the transcript of the deposition of defendant Detective Anthony DiFrancesca, dated July 19, 2019.

6. Annexed hereto as Exhibit E is the transcript of the deposition of defendant Detective Darren McNamara, dated February 5, 2019.

7. Annexed hereto as Exhibit F is the transcript of the deposition of defendant Captain (now Deputy Inspector) Eugene McCarthy, dated June 21, 2019.

8. Annexed hereto as Exhibit G is the transcript of the deposition of defendant Lieutenant Michael Licitra, dated March 28, 2019.

9. Annexed hereto as Exhibit H is the transcript of the deposition of defendant Police Officer (now Detective) Aramis Ramos, dated July 10, 2019.

10. Annexed hereto as Exhibit I is the transcript of the deposition of defendant retired Detective Richard Hefner, dated March 1, 2019.

11. Annexed hereto as Exhibit J is the transcript of the deposition of defendant Sergeant Kevin O'Doherty, dated February 20, 2019.

12. Annexed hereto as Exhibit K is the transcript of the deposition of defendant retired Detective Andrew McCormack, dated January 31, 2019.

13. Annexed hereto as Exhibit L is the transcript of the deposition of defendant retired Detective Finbarr McCarthy, dated June 26, 2019.

14. Annexed hereto as Exhibit M is the transcript of the deposition of retired Chief Vincent Giordano, dated February 27, 2019 (redacted pursuant to Item # 5.B.i. of the Court's Individual Rules & Practices in Civil Cases).

15. Annexed hereto as Exhibit N is the transcript of the deposition of retired Chief John Sprague, Commanding Officer of the Force Investigation Division, dated June 11, 2019.

16. Annexed hereto as Exhibit O is the transcript of the deposition of Sergeant John Flynn, Rule 30(b)(6) witness on topics related to emotionally disturbed persons, dated July 25, 2019.

17. Annexed hereto as Exhibit P is the transcript of the deposition of Police Officer Josip Sovulj, Rule 30(b)(6) witness on topics related to tasers, dated June 14, 2019.

18. Annexed hereto as Exhibit Q is the transcript of the deposition of paramedic Dana Baier, dated March 29, 2019, and July 1, 2019.

19. Annexed hereto as Exhibit R is the transcript of the deposition of paramedic Wenceslao Perez, dated June 18, 2019.

20. Annexed hereto as Exhibit S is the transcript of the deposition of OCME pathologist Monica Smiddy, M.D. dated March 7, 2019.

21. Annexed hereto as Exhibit T are the transcripts of the continued deposition of North Central Bronx Hospital (NCBH) treating physician Joshua Silverberg, M.D., dated January 2, 2019, and March 15, 2019.

22. Annexed hereto as Exhibit U is the transcript of the deposition of NCBH nurse Nelma Matira, R.N., dated June 19, 2019.

23. Annexed hereto as Exhibit V is the transcript of the deposition of plaintiff's retained expert pathologist Kevin Whaley, M.D., dated August 22, 2019.

24. Annexed hereto as Exhibit W is the transcript of the deposition of plaintiff's retained expert emergency department physician Evan Cohen, M.D., dated September 12, 2019.

25. Annexed hereto as Exhibit X is the transcript of the deposition of Narco Freedom House # 19 resident counselor Curtis Joseph, dated August 26, 2019.

26. Annexed hereto as Exhibit Y is the transcript of the deposition of Narco Freedom House # 19 senior resident counselor Shawn Mojica, dated July 15, 2019.

27. Annexed hereto as Exhibit Z is audio of the 911 call placed by Narco Freedom House # 19 resident counselor Curtis Joseph from Narco Freedom House # 19 on July 1, 2015.

28. Annexed hereto as Exhibit AA is the transcript of the deposition of Narco Freedom House # 19 resident counselor Terrence Thomas, dated October 16, 2019.

29. Annexed hereto as Exhibit BB is the transcript of the deposition of Narco Freedom House # 19 resident Charles Webb, dated September 11, 2019.

30. Annexed hereto as Exhibit CC is audio of a statement made by Narco Freedom House # 19 resident Charles Webb to Assistant District Attorney Peter Kennedy on July 2, 2015.

31. Annexed hereto as Exhibit DD is audio of a statement made by Narco Freedom House # 19 resident counselor Terrence Thomas to Assistant District Attorney Peter Kennedy on July 2, 2015.

32. Annexed hereto as Exhibit EE is a certified copy of the medical records for Anthony Paul for July 2, 2015, maintained by North Central Bronx Hospital (redacted pursuant to Item # 5.B.i. of the Court's Individual Rules & Practices in Civil Cases).

33. Annexed hereto as Exhibit FF is a certified copy of the autopsy report for Anthony Paul maintained by the Office of the Chief Medical Examiner of the City of New York (redacted pursuant to Item # 5.B.i. of the Court's Individual Rules & Practices in Civil Cases).

34. Annexed hereto as Exhibit GG is the Judgment of Conviction for Anthony Paul, dated January 5, 2011.

35. Annexed hereto as Exhibit HH are U.S. Probation records for Anthony Paul.

36. Annexed hereto as Exhibit II is the trial testimony of plaintiff's proffered police procedures and practices expert witness Walter Signorelli in Davila v. City of N.Y., Index No. 7669/06 (N.Y. Sup. Kings County), dated March 13, 2013.

37. Annexed hereto as Exhibit JJ is the curriculum vitae and sworn report of Steven Ashley dated June 26, 2019.

38. Annexed hereto as Exhibit KK is the report and curriculum vitae of Kevin Whaley, M.D. dated June 10, 2019.

39. Annexed hereto as Exhibit LL is the report and curriculum vitae of Evan Cohen, M.D. dated May 26, 2019.

40. Annexed hereto as Exhibit MM is the American College of Emergency Physicians (ACEP) White Paper Report on Excited Delirium Syndrome, dated September 10, 2009.

41. Annexed hereto as Exhibit NN is the Declaration of Nelson Sweeting, sworn to on September 1, 2020, with audio recording attached as Exhibit A.

42. Annexed hereto as Exhibit OO is the Declaration of Samuel Baez-Veras, sworn to on September 1, 2020, with audio recording attached as Exhibit A.

43. Annexed hereto as Exhibit PP are copies of the Prehospital Care Reports prepared by the emergency medical technicians (Pre-Hospital Care Report (FDNY)) and the paramedics (Pre-Hospital Care Report (Voluntary Provider, # 8792225)) who responded to the incident (redacted pursuant to Item # 5.B.i. of the Court's Individual Rules & Practices in Civil Cases). Defendants have extracted copies of these documents from the certified medical records for Anthony Paul for July 2, 2015, maintained by North Central Bronx Hospital, which are annexed hereto as Exhibit EE, and have annexed them separately for easy reference.

44. Annexed hereto as Exhibit QQ is the deposition testimony of plaintiff's proffered police procedures and practices expert witness Walter Signorelli in Wittmer v. City of Oneonta, 14 CV 1217 (BKS) (DEP) (N.D.N.Y.), dated December 16, 2015.

45. Annexed hereto as Exhibit RR are plaintiff's Rule 26(a)(1) disclosures dated December 20, 2017.

46. Annexed hereto as Exhibit SS is the Declaration of Debra Jack, sworn to on September 8, 2020, with audio recording attached as Exhibit A.

47. Annexed hereto as Exhibit TT is audio of statements made by Narco Freedom House # 19 staff Terrence Thomas and Curtis Joseph to NYPD internal investigators on July 2, 2015.

48. The discovery produced by the City of New York in this action included a manual reflecting a mandatory two-week training program for ESU officers held at John Jay College on the variety of mental illnesses and interpersonal techniques utilized in interacting with EDPs (Emergency Psychological Technician), and other instructional materials on tactics, tasers and other less-than-lethal devices, and strategies for handling scenarios involving emotionally disturbed persons.

Dated: New York, New York
October 2, 2020

/s/Susan P. Scharfstein

SUSAN P. SCHARFSTEIN